

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK WESTON FULLER

Appeal No. 2004-1300
Application No. 09/872,564

ON BRIEF

Before KIMLIN, GARRIS and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 1, the only pending claim on appeal. Claim 1 is reproduced below:

1. A method of removing a thumbturn assembly from a locking mechanism, comprising retracting a control lug into the thumbturn assembly and then withdrawing the thumbturn assembly from the locking mechanism.

Appeal No. 2004-1300
Application No. 09/872,564

The examiner relies upon the following reference in the rejection of the appealed claim:

Lux et al. (Lux)	5,235,832	Aug. 17, 1993
------------------	-----------	---------------

As is readily apparent from reading claim 1 above, appellant's claimed invention is directed to a method of removing a thumbturn assembly from a locking mechanism. The method entails retracting a control lug into the thumbturn assembly before withdrawing the assembly from the locking mechanism.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Lux.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we find that the examiner's rejection is free of reversible error. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer.

The principal argument advanced by appellant is that the retaining clip of Lux, which is pushed into a groove to facilitate removal of the plug assembly, is not a control lug as recited in claim 1. Accordingly, appellant asserts that Lux does not describe the claimed step of retracting a control lug within

the meaning of § 102. Appellant sets forth the following argument with respect to retainer clips and control lugs:

Retainer clips are spring biased clips that are directly pushed by an object such as a pin, such that a core can be removed from a lock assembly. Whereas, control lugs cannot be pushed directly, but rather are retracted by a mechanism that engages the control lug and allows a core to be removed from a lock assembly [page 3 of principal brief, last paragraph].

The flaw in appellant's position, as maintained by the examiner, is that the present specification does not define the claimed control lug in a manner such that it distinguishes over the retaining clip of Lux. As explained by the examiner, "the only described structure or function of a 'control lug' is to retain the lock cylinder within the housing," and we concur with the examiner that "[t]his is precisely the same function of the retainer clip 450 of Lux et al." (paragraph bridging pages 4 and 5 of Answer). Hence, we agree with the examiner's analysis that "neither the claims nor the disclosure set forth any distinction in the operation of a 'control lug' or a 'retainer clip'" (id.). Furthermore, appellant has not established on the record before us that the terms "control lug" and "retainer clip" are terms of art with known definitions. Moreover, we note that Lux refers to

Appeal No. 2004-1300
Application No. 09/872,564

a retraction of the retainer clip as it is pushed into the groove
240 (see column 16, line 18).

Appellant's principal and reply briefs rely upon declarations of the inventor to establish a difference between a control lug and a retainer clip. However, the examiner has emphasized that the declarations have not been entered into the record (see page 4 of Answer, third paragraph). Whether the examiner "considered" the declarations for purposes of discussion with appellant is irrelevant to the status of the declarations as being non-entered. While appellant contends that "the Examiner's basis for denying entry of the Declarations is not valid" (page 2 of reply brief, first paragraph), the propriety of the examiner's denial of entry is outside the scope of our review. As noted by the examiner, this is a matter that is petitionable.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claim is affirmed.

Appeal No. 2004-1300
Application No. 09/872,564

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	
)	
BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

ECK:clm

Appeal No. 2004-1300
Application No. 09/872,564

Thomason, Moser & Patterson, LLP
Suite 1500
3040 Post Oak Blvd.
Houston, TX 77056